



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2017-0012]

16 CFR Part 1217

Revisions to Safety Standard for Toddler Beds

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In February 2017, the U.S. Consumer Product Safety Commission (CPSC) published an update to the consumer product safety standard for toddler beds. The standard incorporated by reference the applicable ASTM voluntary standard. ASTM has since published two revised versions of the voluntary standard for toddler beds. We are publishing this direct final rule revising the CPSC's mandatory standard for toddler beds to incorporate by reference, the most recent version of the applicable ASTM standard.

DATES: The rule is effective on January 27, 2020, unless we receive significant adverse comment by [insert date 30 days after publication in the FEDERAL REGISTER]. If we receive timely significant adverse comments, we will publish notification in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 27, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2017-0012, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <https://www.regulations.gov>. Follow the instructions for

submitting comments. The CPSC does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: <https://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: www.regulations.gov, and insert the docket number, CPSC-2017-0012, into the “Search” box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Compliance Officer, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone: 301-504-7814; email: jjirgl@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory Authority

Section 104(b)(1)(B) of the Consumer Product Safety Improvement Act (CPSIA), also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires these standards to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard, upon which the CPSC standard was based, is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. *The Toddler Beds Standard*

On April 20, 2011, the Commission published¹ a final rule issuing a mandatory standard for toddler beds that incorporated by reference the standard in effect at that time, ASTM F1821-09, *Standard Consumer Specification for Toddler Beds*, with certain modifications to make the standard more stringent. 76 FR 22019. The standard was codified in the Commission's regulations at 16 CFR part 1217.

ASTM has revised the toddler beds standards several times since issuance of the rule:

- On September 25, 2013, ASTM officially notified the CPSC that ASTM published a revised 2013 version of ASTM F1821. The Commission published a *Federal Register* notice revising the Commission's toddler bed standard to reference ASTM F1821-13, effective March 24, 2014 (78 FR 73692, December 9, 2013).
- On April 6, 2015, ASTM officially notified the CPSC that ASTM had revised ASTM's toddler bed standard again and had published a revised 2015 version of ASTM F1821. Due to an inadvertent omission in the revised ASTM standard, the Commission voted² unanimously to retain the existing consumer product safety standard.
- On December 8, 2016, ASTM officially notified the CPSC that it had published a revised 2016 version of ASTM F1821. The Commission published a

¹ A correction notice was published (76 FR 27882, May 13, 2011) because the Office of the *Federal Register* inadvertently omitted the last two sections and figures from the April 20, 2011 *Federal Register* notice.

² <https://www.cpsc.gov/th/content/rca-astm%E2%80%99s-revisions-to-toddler-bed-standard>.

Federal Register notice incorporating ASTM F1821-16, *Standard Consumer Safety Specifications for Toddler Beds*, effective June 6, 2017, in 16 CFR part 1217 as the safety standard for toddler beds. (82 FR 11317, February 22, 2017).

Since publication of ASTM F1821–16, the current mandatory standard, ASTM has published revised versions of ASTM F1821 in 2018 and 2019. These revised versions of the standard not only update the standard to reflect clarifications to testing for consistency, the revisions also harmonize the standard with other juvenile product standards. ASTM F1821–19 was approved and published in June 2019. ASTM officially notified the Commission of this revision on July 30, 2019. Recently, ASTM published an editorial version of the 2019 standard, ASTM F1821–19^{e1}, which corrects two typographical errors, but does not change the technical content of the 2019 version. The rule is incorporating ASTM F1821–19^{e1} as the mandatory standard.

B. Revisions to the ASTM Standard

The ASTM standard for toddler beds, ASTM F1821–19^{e1} defines a “toddler bed” as any bed sized to accommodate a full-size crib mattress having minimum dimensions of 51 5/8 inches (1310 mm) in length and 27 1/4 inches (690 mm) in width and is intended to provide free access and egress to a child not less than 15 months of age and who weighs no more than 50 pounds (22.7 kg). The standard has provisions that address the following hazards: entrapment in bed end structures, entrapment between the guardrail and side rail, and entrapment in the mattress support system. In addition, the ASTM standard has provisions addressing corner post extensions, which may catch cords, ribbons, necklaces or clothing. Under section 104(b)(4)(B) of the CPSIA, unless the Commission determines that ASTM’s revision to a voluntary

standard that is a CPSC mandatory standard “does not improve the safety of the consumer product covered by the standard,” the revised voluntary standard becomes the new mandatory standard. As discussed below, the Commission determines that the changes made in ASTM F1821–19^{e1} will either improve the safety of toddler beds or are neutral with respect to safety. Therefore, the Commission will allow the revised voluntary standard to become effective as a mandatory consumer product safety standard under the statute, effective January 27, 2020.

We summarize the differences and the CPSC’s assessment of the revisions to ASTM F1821 below.

1. Differences between 16 CFR part 1217 and ASTM F1821-18

ASTM F1821–18, was approved and published in December 2018, and was the first revision of the standard following ASTM F1821–16, the current mandatory standard. ASTM did not notify CPSC of this update because ASTM was waiting to make an additional change to the standard. ASTM F1821-18 made the following changes:

- Section 1.7 states “*This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety, health, and environmental practices and determine the applicability of regulatory limitations prior to use.*” (Underlined language was added to the standard). We conclude that adding the word “environmental” does not change the safety of toddler beds because this does not relate specifically to the toddler bed requirements.
- The 2018 version of the ASTM standard added language (Section 1.8), which ASTM intends to add to all of its standards, stating that ASTM developed the

standard in accordance with principles recognized by the World Trade Organization. We conclude that adding this text does not change the safety of toddler beds because the language pertains to voluntary standards development generally.

- The terminology section has a new definition for corner posts, “3.1.3 *corner post*, n—vertical post located at the corner of a product.” This definition does not change any other aspects of the standard. Therefore, we conclude this addition is neutral to the safety of the toddler beds.
- An editorial change was made in section 7.8.3 deleting the period in “15–lbf.” to “15–lbf” We conclude this editorial change is neutral to toddler bed safety.

2. Differences between 16 CFR part 1217 and ASTM F1821-19^{e1}

ASTM F1821–19 contains changes to the performance requirements for section 6.2 *Mattress Support System Attachment and Side Rails Integrity*, as well as the testing requirements in section 7.3 *Mattress Support System Attachment and Side Rails Integrity Tests*. Some toddler beds have separate mattress support systems and side rail attachments to the end structure, so this change clarified that both the mattress support system and the side rail attachments must be tested. The testing requirement provide specific instructions for the mattress support system (section 7.3.2) and the side rails (section 7.3.3). We consider the clarification of performance and test requirements for mattress support system attachment and side rails to be an improvement to the safety of toddler beds because the change removes ambiguity and it assures more consistent testing.

Section 7.3.3 *Side Rails* of ASTM F1821–19 incorporates the previous section 7.3.4 requirements into section 7.3.3.2. However, publication of ASTM F1821–19

included the previous section 7.3.4 requirements, thus repeating the section 7.3.3.2 requirements. ASTM published ASTM F1821–19^{el} to make two editorial corrections: deleting section 7.3.4 and correcting the word “load” in section 7.3.3.2 to “force.” These editorial corrections do not change the voluntary standard requirements, but merely correct drafting errors, and therefore, the standard is simply noted with the epsilon.

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR’s requirements, section B of this preamble summarizes the major provisions of the ASTM F1821-19^{el} standard that the Commission incorporates by reference into 16 CFR part 1217. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. A copy of the standard can also be inspected at CPSC’s Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because toddler beds are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in section 104(d) of the CPSIA.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing toddler beds (76 FR 22030, April 20, 2011). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing toddler beds to 16 CFR part 1217. The

NORs for all mandatory standards for durable infant or toddler products are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies," codified at 16 CFR part 1112.

Testing laboratories that have demonstrated competence for testing in accordance with ASTM F1821-16 have the competence to test in accordance with the revised standard ASTM F1821-19^{e1}. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F1821-16 to be capable of testing to ASTM F1821-19^{e1} as well. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to this standard also to cover testing to the revised standard. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment is not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F1821-19⁶¹ to become CPSC's new standard. The purpose of this direct final rule is merely to update the reference in the Code of Federal Regulations so that it reflects accurately the version of the standard that takes effect by statute. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment are not necessary. In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgating rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the "unnecessary" prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on January 27, 2020. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter

explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained, the Commission has determined that notice and comment are not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

H. Paperwork Reduction Act

The standard for toddler beds contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revisions made no changes to that section of the standard. Thus, the revisions will not have any effect on the information collection requirements related to the standard.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as "consumer product safety rules," thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

K. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety

standard was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. The Commission has not set a different effective date. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revision to this standard. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on January 27, 2020.

L. The Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a “major rule.” Pursuant to the CRA, OIRA designated this rule as not a “major rule,” as defined in 5 U.S.C. 804(2). In addition, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1217

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends title 16 CFR chapter II as follows:

PART 1217 – SAFETY STANDARD FOR TODDLER BEDS

1. Revise the authority citation for part 1217 to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112-28, 125 Stat. 273.

2. Revise § 1217.2 to read as follows:

§ 1217.2 Requirements for toddler beds.

Each toddler bed shall comply with all applicable provisions of ASTM F1821-19^{e1}, Standard Consumer Safety Specification for Toddler Beds, approved June 1, 2019. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; www.astm.org. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission

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